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November 18, 1996

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

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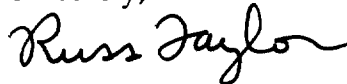
Re: **Bruce Bryant**
WT Docket No. 96-199
Comments Concerning Finder's Preference Program

Dear Mr. Caton:

Transmitted herewith, on behalf of Bruce Bryant, are an original and four copies of his Comments in response to the Commission's Notice of Proposed Rule Making, FCC 96-383, released September 27, 1996.

Should there be any questions concerning this transmittal, please do not hesitate to contact the undersigned.

Sincerely,



Russ Taylor

Enclosures

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Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
) WT Docket No. 96-199
Amendment of Part 90 Concerning the)
Commission's Finder's Preference Rules)

Comments of Bruce Bryant

Bruce Bryant ("Bryant"), by his attorneys, submits these comments in response to the Federal Communications Commission's ("FCC" or "Commission") Notice of Proposed Rule Making ("NPRM"), FCC 96-383, released on September 27, 1996. In its NPRM, the Commission proposes to eliminate the Finder's Preference Program for the band 220-222 MHz. The Commission's NPRM also seeks comment on whether it should dismiss pending Finder's Preference requests for other frequency bands.

Bryant filed a Finder's Preference request with the Commission on November 3, 1994, seeking the trunked Specialized Mobile Radio ("SMR") authorization licensed to Donnie Jones, station WNPU571. See FCC Compliance File No. 95F514. That proceeding remains pending. In the NPRM, the Commission indicated that it proposes "to retain the discretion to dismiss pending finder's preference requests for any services in any frequency bands in which we decide to eliminate the finder's preference program as a result of this rule making proceeding." NPRM at ¶ 11. While the Commission's proposal is vague and subject to differing interpretations, Bryant submits these comments to urge the Commission to continue to process those pending 800 MHz SMR

Finder's Preference requests that were filed before the termination of the program for that service.

The Commission should not dismiss this "pending" claim for the several reasons. First, the Commission is required by law to treat all similarly-situated applicants in a similar manner. Melody Music v. FCC, 345 F.2d 730 (D.C. Cir. 1965). If the Commission dismissed Bryant's pending Finder's Preference request without further consideration, it would violate the requirements of Melody Music. The FCC processed other Finder's Preference cases, including cases that were subject to petitions for reconsideration, that were filed well after Bryant's request. See e.g., FCC Compliance File Nos. 95F795, 95F865. If the FCC processed some cases and not others, and failed to draw a logical distinction between the two, the Commission's action would be in violation of the D.C. Circuit's instructions in Melody Music.

The Commission appears to have no discernible methodology by which it resolves pending Finder's Preference requests. The cases are certainly not resolved in the same order that they were accepted for filing. For example, routine cases, such as consensual Finder's Preference requests are processed on an expedited basis. Thus, the timing of the final disposition of a case might have more to do with its ease of resolution than the date that it was submitted to the Commission. As of this date, many of the cases that have been pending for quite some time are the cases that present difficult legal issues or close questions of fact. By dismissing pending requests, the Commission would, in cases like Bryant's, essentially be foregoing its duty to render difficult factual

or legal decisions that were properly submitted to it for resolution. An agency has a non-delegable duty to make "hard" decisions and is required to state its grounds for the denial of well-supported claims. See Flagstaff Broadcasting Foundation v. FCC, 979 F.2d 1566 (D.C. Cir. 1992) ("agency must be able to explain its reasons . . . when properly challenged in a specific case."). Dismissal of these types of cases without consideration is therefore, not reasoned decisionmaking.

Finally, the Commission should recognize that it created the Finder's Preference program to encourage private parties to seek out those channels that were subject to automatic cancellation and recovery through the administrative process. See 6 FCC Rcd 7297 (1991). The Commission, if it were to retroactively dismiss pending Finder's Preference requests without further consideration, would unfairly treat those parties that spent time and money to seek out channels that were not used in accordance with the Commission's rules.

Based on the foregoing, Bryant urges the Commission to continue to process those Finder's Preference cases that are still pending before the Commission.

Respectfully submitted,

BRUCE BRYANT

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CERTIFICATE OF SERVICE

I, Christine Peyton, a secretary in the law firm of Gardner, Carton & Douglas, certify that I have this 18th day of November, 1996, caused to be sent by first-class U.S. mail, postage-prepaid, a copy of the foregoing "Comments of Bruce Bryant" to the following:

Mr. Alfred Holden
c/o Telepage Communications
2919A White Horse Road
Greenville, SC 29611

Christine Peyton
Christine Peyton